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NECESSITY AND PURPOSE OF ANTI-TRUST LEGISLATION

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The particular phase of the "Present Business Situation" to be considered in this paper is the effect upon business of anti-trust legislation. I do not mean anti-trust legislation in a radical sense, since the trusts have become a permanent and essential part of the business system of the country and legislation against them would be futile, but I mean legislation designed to regulate and measurably control them. The briefest consideration of this subject will be guided by the particular object of the legislation in view, because, in any case, business expediency must yield to the public welfare in its broader sense, and a temporary sacrifice is often necessary to insure a permanent benefit.

To begin with, I think it is mischievous to attribute to legislation the recent panic and the business depression which ensued. Such a theory deprives us of the only profit to be derived from the experience, and it diverts attention from conditions which require careful consideration. According to a Spanish proverb, "There is no evil that does not result in good," so the effects of the panic will not be all a loss unless by wrongly ascribing them we ignore the real cause and fail to take precautions against a recurrence. The fact is that prosperity was over-exploited, public credulity capitalized, and funds were diverted from legitimate employment. It is true that agitation favoring trust legislation, by calling attention to corporate abuses, hastened the day of reckoning, but if it had been deferred it would have been a day of calamity. Inasmuch as the reaction was inevitable, it is well it came when the inherent soundness of the situation saved us from disaster. The tide running flood for many years made a current so deep and strong that the channel-marks of safety were lost to view. They become visible

again as the tide recedes, and if heeded will protect us from worse conditions than those we have known. Prosperity, like good food, incurs the penalty of indigestion unless discretion tempers indulgence.

The legal use by many mere agencies of speculation of the term "Trust Company," a title heretofore associated with extreme conservation, is an example of the lack of discretion observed and of the laxity of the law. Moreover, nearly all the trust companies in New York had adopted banking functions heedless of the clearing house demand for conformity to banking precautions. Thus, with over \$600,000,000 of deposits (a large proportion of them payable on demand), a number of these institutions had practically no reserve fund when the panic broke. This acute feature of the situation was not due to legislation but to the successful resistance to legislation that would have safeguarded it.

With the trusts as they have developed during an era of wonderful industrial progress, or at least with those of them that do not run counter to public policy, we have no quarrel. For better or for worse, they are established institutions, entitled to all the protection of the law which gave them existence. Their methods of formation, however, and their purposes and procedure, in so far as they do oppose public policy, require legislation to regulate and control them, and such legislation is not to be subordinated to its immediate or temporary effect. They have brought into business life a new set of conditions not contemplated by existing law, and in advance of legislation to govern them. Each of these mighty and impersonal agencies is founded upon the displacement of many independent proprietors and aims at further absorption and a complete monopoly of its products—with all the functions pertaining to it—from the first source of supply to final consumption. Their object is to pay dividends upon greatly inflated capital; they are unhampered by the ethical standards that pertain to personal relations and do not concern themselves with questions of public policy when in conflict with their own interests, while their vast resources are a bar to individual enterprise and to competition, which is the life of trade. Having acquired dominion in their respective spheres, absorption continues *inter se*, until, if unrestricted, a situation arises which is

a menace to the state. The life insurance disclosures have shown how concentrated wealth breeds a sense of power readily convinced of the superiority of its own interests—to be protected at all hazards. On the other hand, the trusts supply a requirement of modern business which in the enlarged scale of operations is beyond the efforts and resources of individuals and private firms, and it is this consideration that conciliates the natural sentiment against them.

The necessity for laws to govern these new conditions is not open to dispute, however opinion may differ as to what constitutes necessary legislation. The trusts on their part assisted by a corps of the highest legal talent, while asserting every privilege and immunity that the most favorable construction of the law affords them, resist new legislation affecting their interests except such as is specifically framed on their behalf. While public opinion does not countenance reprisal, it is small wonder that this practice of the trusts injures them in public esteem and at times results in hasty and unwise enactment. Such an enactment seldom does serious harm, because it cannot invade fundamental rights, and as a matter of fact it yields to an enlightened public opinion. In any case, no sort of legislation so harmfully affects business as do the methods employed by special interests to influence enactment and enforcement—while one is subject to correction the other paves the road to socialism or worse. In the main, legislators are responsive to public opinion and the law is justly administered. If this ceases to be the case, the remedy is not the money power, indeed, the money power and property itself may well look to their own stability.

Legislation itself, however, is seldom the cause of serious disturbance in business. Conditions readily adapt themselves to the accomplished fact, but agitation to secure legislation, and the uncertainty which attends it, alarm capital and clog the wheels of trade. If, for this reason, agitation is to be considered a malady, our first care should be to remove the cause. There is no disposition to hamper the legitimate functions of the trusts or to rank the observant among them with the delinquent,—at the present time, for example, they have the support of intelligent opinion in seeking an amendment to the antiquated Sherman Law in its unduly restrictive features. On the other hand, what voluntary deference

do the trusts show to the public will? They have resisted the enlargement of the power of the Interstate Commerce Commission as required to meet conditions arising; they demur to a proper control of public utilities; and they have opposed a revision of the tariff upon the plea that it would interrupt prosperity. The burden of adjusting conditions to a new schedule will now fall upon business when it has other cares to distract it, and the issue adds anxiety to the forthcoming election. If this obstructive attitude is continued on their part there can be no surrender or compromise on the other side, and the contest must go on—not in a vindictive spirit, however, but as our respected governor in New York upholds the constitution—steadily and persistently. Whatever may be the cost of such a struggle, or whatever its effect upon business conditions, victory will be cheap.

The mere statement of a few of the objects and effects of trust dominance is sufficient argument against them. The shipping and shipbuilding trusts, formed under the ægis of successful finance to exploit an expected grant from the public treasury, were a mockery of public intelligence in their ponderous capital. The tyranny of the tobacco trust in its methods of acquiring control is a matter of reproach. The scandals of the lighting and traction trusts throughout the country make pabulum for the demagogue. Are these conditions to continue for fear of the effect of corrective legislation upon business? Is there to be no supervision of the extent of authorized capital, or no requirement for the publicity of essential facts because Wall Street decries anything that disturbs values? Are food products to go uninspected because the exposure of the methods of the beef trust impaired its foreign trade, or must the great cities be content with the lighting and traction service they now get while franchises and the franchise-making power are corruptly manipulated? To put these propositions in the form of queries is an injustice to American readers. An answer comes from distant San Francisco, where the determined attitude of the citizens' committee excites our admiration. Against a press which laments the effect upon business, and society which frowns at the implication of its members, these resolute men insist that trust officials who make chattels of public servants shall be adequately punished, and that high station is but an aggravation of their offence.

In the administration of the trusts there are also features of sufficient importance to require legislative provision. Not to expand these statements beyond the space allowed, I will mention but one, which I believe is more prolific of trouble than any other. I allude to complacent directors, with the fullest faith that in point of intelligence and integrity the average American business man is the peer of his fellow in other communities. In the category of business men I do not, of course, include the gilded youth who points with pride to his selection of a father, nor the man of broader knowledge and experience whose vanity craves a score of directorates to the neglect of all, but the men who have made a success of their own affairs and who recognize the obligations incurred by a director. Such men, it is true, have little time to give to the affairs of corporations, but often when available they are "not serviceable" because of a propensity to discover and expose the schemes of an inner circle. The long lists of directors of many large fiduciary institutions, judged by their record of attendance and measured by their knowledge of the affairs that they direct, do not inspire confidence but explain the melancholy midnight processions in New York during the trying days of the panic. Men of unblemished personal record passed sleepless nights in saving from the effect of their neglect several prominent institutions. If this was the only damage done it could be complacently regarded, but the consequence was to prolong the turmoil, and the community is justified in expecting legislation to substitute the practical for the picturesque.

It is incredible that the reputable men who were directors of the delinquent trust companies in New York were cognizant of the conditions which led to their troubles, or that their judgment had due weight in the councils that resisted the dictates of prudence. The Constitution of California makes broad provision for the accountability of directors and trustees alike. This provision was objected to at the time of its adoption, on the score that men of means would not serve as directors, but the event has proved otherwise. It is not to the point that business procedure requires the delegation of power and authority to executive officials, because the same necessity applies to private firms, and directors are properly helden to the measure of care and

supervision exercised by a merchant, and the community is entitled to such assurance.

"The people who are governed least are governed best" is equally true of corporations, without prejudice to the necessity for legislation to fix their status and regulate their procedure. Shorter sessions of Congress and state legislatures are devoutly to be wished, and the trusts can contribute to this end by realizing the futility of opposition to measures vital to the public interest. If those in control would recognize a trust in the broader sense and render to Cæsar only his due, make public policy a part of their consideration, and conduct the affairs in their charge in the same way that made their earlier careers a success we would hear less of anti-trust legislation and its effect on business. On the contrary, reciprocal relations, if established, would disarm captious criticism and vanquish an antagonistic sentiment that the trusts have done much to provoke.

It is not my purpose to paint a picture of gloom or of despondency. There is no occasion for gloom and no room for despondency in this land of hope and plenty. Perpetual sunshine is neither to be expected nor desired. The business man awakened to his opportunity and responsibility is equal to the problems he has to solve. It first behooves the financiers, however, to come back to their moorings. They have departed from the time-honored conservatism of their guild to dangle the bait of "get-rich-quick" methods. The great corporations which they have launched are a pride only in the success they attain. Their prosperity can be no greater than the prosperity of the country at large, that is the prosperity of the individual, without whose restored confidence the occupation of the magnate of finance is gone.